2: Schapera E-4, 5 (no date) 1930
FX13 Hottentot FX13
Nama
Cape Hottentots

between different kraals, and relations with neighbouring tribes or with the European settlers. In this council the authority of the chief was dependent mainly upon his personality. His normal duties were to direct and sum up the deliberations of its members, who sat around him in a circle. If he was a man of strong character, he could succeed in imposing his will upon the others; otherwise his opinion might be disregarded, and he had to abide by the decision of the majority.

When not occupied with tribal affairs of this nature, the chief was concerned merely with the government of his own local group, i.e. of the kraal where he resided. In this respect he played the part of an ordinary kraal headman. Every large Hottentot kraal had its own recognized headman or "captain" (usually spoken of in the early Cape Records by the Dutch title "kapitein"), whose status was hereditary in the same way as that of the chief. The ceremonies of accession, as described by Kolb, were also similar to those of the chief, except that the headman had to make his pledge before the adult men of the kraal, and to provide the feast for them. All these men constituted a loosely-organized council over which he presided. They acted in the first instance as a court of justice. They met to settle disputes of right and property between the inhabitants of the kraal, and tried and punished criminal offences committed within their jurisdiction. The verdict arrived at was pronounced by the headman, and where the death penalty was imposed his was the first hand to smite down the culprit. There was no appeal from their decision or sentence to the main tribal council. They also dealt with all matters affecting the common interests of the kraal, such as removal to new pasture grounds, public feasts and sacrificial offerings. The rôle of the headman in this council was roughly similar to that of the chief in the tribal council, and the degree of his authority was determined by the strength of his character. In time of war he also had the command, under the chief of the tribe, of the troops supplied from his kraal.

Neither the chief nor the headmen had special insignia or other marks of office, except that their karoosses were made of leopard or wild cat skins; but the Dutch, when they entered into alliances with the Hottentot tribes, presented to the former a crown of copper, and to each of the latter a copper-headed cane, which henceforth were regarded as distinguishing badges of authority. The chief was not entitled to the personal services of his subjects, nor, says Kolb, did he receive anything in the nature of tribute or public

2: Schapera E-4, 5 (no date) 1930
FX13 Hottentot FX13
Nama

affairs, and they can act as assessors at the deliberations of the councillors. The chief cannot disregard their opinion, otherwise internal dissensions and even tribal disruption may ensue.[1] They serve to give more emphasis to the popular voice in determining public policy.

The council is the tribal executive. It makes wars and treaties, rules and regulations for the public conduct, and deals with the internal and economic affairs of the tribe, as well as with inter-tribal relations. In its proceedings the vote of the chief is generally of no greater weight or value than that of any one of the elected councillors, although his expressed opinion bears great influence and probably ensures a majority for him in most cases, while if he is a man of strong character he may even succeed in dominating the others. The council is also the main court of justice. Civil litigants and criminals, who are usually dealt with by the magistrate or the sub-chiefs acting as the chief's deputies, can resort to it as a final court of appeal. Cases of serious import or serious charges involving possibly a sentence of capital punishment are generally dealt with by it as a court of first instance. In such cases an appeal lies to the chief in person, who has the right to exercise his prerogative of mercy. No capital punishment can legally be executed before he has expressly given his sanction.

In large tribes each outlying village or kraal is governed by a sub-chief ("onderkapitein"), appointed as deputy of the tribal chief by the chief-in-council. Often enough this sub-chief is one of the chief's closer relatives in the male line. He has his own local councillors, court, and officials, and can deal with all matters arising within his jurisdiction. There is always an appeal from his court to the main tribal council although as a rule the chief never deals with such an appeal without first referring the matter back to him for report.

Apart from the fact that the chief is generally the wealthiest man in the tribe, he is not distinguished in any special way from his subjects. At most his hut is somewhat bigger, and at communal meals he retrieves the best portion of meat, viz. the hind quarters.[2] Shaw, writing in 1821,[3] says also that the chief claims a part of every animal taken in hunting; moreover, on the death of his wife, every adult man has to give him a cow, which, however, is returned after a certain

[1] Cf. the observations given of this by von François, op. cit., pp. 21 f.
[2] Hahn, "Die Nama-Hottentotten," [illegible]
[3] Report of the Wesleyan Methodist Missionary Society, 1821, pp. [illegible]; cf. Alberti, Beschreibung [illegible]

2: Schapera E-4, 5 (no date) 1930
FX13 Hottentot FX13
Nama
Cape Hottentots

was listened to with undivided attention. The matter was then thoroughly discussed by the councillors, the verdict being arrived at by the decision of the majority. If the accused was acquitted, a few head of cattle from the herds of his accusers were adjudged to him as compensation. But if he was found guilty, and the headman, in whose hands the final sentence lay, pronounced in favour of death, the sentence was immediately executed. The headman, as chief executioner, rushed towards the criminal and felled him to the ground with a heavy blow of the kirri; all the other men then violently attacked him until he was beaten to death.[1]

No distinction was made in the execution of this sentence according to the status, wealth, age, or sex of the criminal; the headman himself, if found guilty of such a crime, would be dealt with in the same way. The body of the criminal, however, was buried with all the customary formalities observed in normal cases of death; his property was inherited as usual by his heirs, and no stigma attached to them as a result of his crime and his fate. There is good reason for supposing that this corporal punishment was not necessarily carried to extremes, but could be made more or less severe, according to the nature of the case and the decision of the council.

There was no appeal from the verdict of the kraal council, either in civil disputes or in crimes. The main tribal council, consisting of the chief and the kraal headmen, dealt only with disputes between different kraals. It was summoned by the chief on receipt of any complaint, and its proceedings were conducted along the same lines as those of the kraal councils.

The description given above can hardly be regarded as exhaustive or even as entirely trustworthy. Its interest lies mainly in the comparison it affords with the conduct of trials among the Namas, about whose legal usages we have more adequate information.[2] The local kraal councils can deal with civil disputes and minor offences, and impose corporal punishments or fines; but there is always an appeal from their judgments to the main tribal council, to which all cases of importance are also referred as a court of first instance. No special distinction is made in procedure between civil and criminal cases. The judges in all important trials are the elected councillors

[1] An eye-witness account of such an execution, in which four men were beaten to death, is quoted by Gustav Mechelmann, op. cit., i, 179–9.

[2] The fullest accounts are given by Wandres, "Ueber Rechtsverhältnisse und Rechte der Hottentotten," 279–84; Vedder, "The Nama," 140–41; Rudolph, "Das Recht der Hottentotten," 313–17; cf. also Hahn, "Die Nama-Hottentotten," 308; and Fourie, Morse and Drennan, 661; Wandres, "Die Khoi-Khoin," 304–5; Report on the Natives of S.W.A., 73–4 passim.

5: Vedder M-5 (ca. 1910) 1928
FX13 Hottentot FX13
NAMA

533 517 monium enthusiast, however, did not care for that and continued playing up to midnight. When this was prohibited as against the rules of the house, he answered that he did not know that they were not allowed to study after nine o'clock. One night after that he was found at the harmonium at two o'clock in the morning and excused himself by saying that the rules of the house, which he was willing to abide by, did not stipulate at what time of the morning a pupil could begin to study! In four months' time he had made so much progress in playing the harmonium that he accompanied the hymns in the community services.

532 517 8. Many of the young people also show aptitude in the art of painting. A grandson of the notorious Hendrik Witbooi painted two ostriches with such a typically African background in coloured chalk on the board for his final examination after three years' preparation for the profession of teacher, that even the Government Inspector was amazed. Thus, the results of the mental development of the Nama, clearly perceptible to-day, show that the trouble and pains bestowed on them bear fruit; and nothing is more erroneous than to imagine the Hottentots are mentally one of the most primitive races. In the political economy of South-West Africa their weakly physique will play a very small part however; but for work which does not exact much bodily strength but requires intelligence the Nama will in the future be preferred to other natives.

IX. Usage and Laws.

642 643 645 The Chief with councillors and magistrate is the representative of the law. The last named is his right hand in all public and legal matters. Under normal circumstances the son inherits the chieftainship from his father. In times of peace the powers of the Chief are very limited. Without having consulted a mass meeting and without the decision of the councillors the instructions of a chief are of very little consequence. The form of government of a chieftainship is altogether democratic. Within this democratic frame, however, the Chief rules like a patriarch. This state of affairs is radically changed during war. If a war breaks out the Chief becomes dictator.

645 643 The councillors are elected at a mass meeting, and at the same time function as judges. Decisions by them are regarded as laws by the tribe and their sentences, passed under the presidency of the eldest among them, are executed. There is no appeal to a higher court. Only in cases where there is no consensus of opinion among the judges with regard to the passing of a sentence in the matter referred to the Chief whose casting vote then settles the question finally.

[641] 642 2. As the Nama possess a very fine sense of justice and injustice, legal disputes are not at all uncommon. But since

South West has become a colony and a mandated territory. 692
confidence in their own jurisdiction has decreased even where it has been left in their hands. They do not regard their own judges as impartial enough to administer justice to the complainant or accused. This is no wonder! As a result of their close cohabitation it is very difficult for a judge to administer justice quite regardless of the person and his property.

3. In earlier days and in some tribal unions still to-day 695
the procedure in a law-suit is as follows: The complainant lodges his complaint with the magistrate who at the same time exercises the powers of a policeman. The magistrate then summons the judges; and the complainant and accused are summoned by messengers. The sitting takes place in the open as a rule. The complainant has to provide sufficient food for the judges as long as they sit. Generally he delivers some goats in advance in payment of the legal expenses. If the accused is unwilling to appear he is brought by force by strong men duly authorized in such circumstances. The complainant as well as the accused stand at a distance from the place where the court is held or squat down on the ground till they are called. The summoned witnesses also remain within a reasonable distance. The magistrate then lays the case before them. The oldest person amongst the judges, who is chairman, then gives the complainant the word. Thereupon the accused is heard. Care is taken that only one person speaks at a time; for the rest absolute freedom prevails. If the case has been sufficiently investigated the complainant and the accused together with the witnesses have to withdraw. The judgment is passed unanimously when possible and pronounced by the chairman. If punishment is to be inflicted it is executed at once and the accused has to replace the goats paid for expenses by the complainant.

4. The methods of punishment in olden days were: Death 681
executed in many ways according to the nature of crime. He, who had slain someone, was beaten to death with clubs and sticks. When one had shot another, he also was shot. Other sentences were: Fines, payable in goats; corporal punishment in the form of flogging or branding and, lastly, confiscation of property or the declaration of such people, who have been found to be a danger to the public, as of unsound mind. These were then outlawed and might be done away with, without being punished. To-day a sentence of death can only be passed by the Government and duly constituted law-courts. Punishment among the Nama to-day is confined to flogging, fines and fees payable in goats.

5. Rules for the degrees of punishment were never, and 681
have not yet been, definitely fixed. Nevertheless no rule was 685
allowed to be broken within certain boundaries. The confirmed cattle-thief had to expect harder punishment at each conviction and these were usually meted out in the form of